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5 UNITED STATES  
6 ENVIRONMENTAL PROTECTION AGENCY  
7 REGION 9

8 In the Matter of: )

9 TECHNICAL ORDNANCE, INC. )  
County Road 92 and Nike Road )  
10 P.O. Box 248 )  
11 St. Bonifacius, Minnesota: )

EMERGENCY REMOVAL

12 Respondent. )

ORDER

13 PROCEEDING UNDER SECTION 106(a) OF )  
14 THE COMPREHENSIVE ENVIRONMENTAL )  
15 RESPONSE, COMPENSATION AND LIABILITY )  
16 ACT OF 1980, [42 U.S.C. § 9606(a)], )  
as amended by the SUPERFUND )  
AMENDMENTS AND REAUTHORIZATION ACT )  
OF 1986, Pub.L.No. 99-499. )

86-10

17 I

18 INTRODUCTION\*

19 1. This Order is issued to Technical Ordinance, Inc.  
20 ("Respondent") pursuant to Section 106(a) of the Comprehensive  
21 Environmental Response, Compensation and Liability Act of 1980,  
22 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and  
23 Reauthorization Act of 1986, Pub.L.No. 99-499, ("CERCLA"). The  
24 authority to issue this Emergency Removal Order ("Order") has  
25 been delegated by the Administrator of the United States  
26 Environmental Protection Agency ("EPA") to the Regional  
27

28 \*/ Headings are for convenience only.

1 Administrator of EPA, Region 9 and redelegated to the Director,  
2 Toxics and Waste Management Division, EPA, Region 9, by the  
3 Administrator of the EPA. On October 26, EPA provided notice of  
4 the issuance of this Order to the State of Arizona.

5 2. The Director, Toxics and Waste Management Division, EPA,  
6 Region 9, has determined that there may be an imminent and sub-  
7 stantial endangerment to the public health and welfare and the  
8 environment caused by a release or threat of release of a  
9 hazardous substance as defined in Section 101(14) of CERCLA, 42  
10 U.S.C. § 9601(14), resulting from the presence of such substances  
11 at the Dela Tek, site located near Coolidge, Arizona ("the Site").

12 3. This Order directs the Respondent to undertake actions to  
13 protect public health and welfare and the environment from this  
14 endangerment.

## 15 II

### 16 FINDINGS OF FACT

17 4. Technical Ordnance, Inc., is a Minnesota corporation. Dela  
18 Tek is a division of Technical Ordnance.

19 5. At the Site, Dela Tek manufactures and distributes a variety  
20 of pyrotechnic devices such as flares, signals, ammunitions and  
21 simulator hand grenades.

22 6. The Site occupies approximately 33 acres in the Blackwater  
23 Industrial Park on the Gila River Indian Reservation. It is  
24 located approximately 10,000 feet north of the Gila River. There  
25 are approximately 22 buildings on site. A dry wash runs through  
26 the Site. (This wash carries running water during periods of  
27 heavy rainfall.)

28 / /

1 7. On June 21, 1973, an explosion at the Site (then known as  
2 Dela Enterprises) resulted in the death of an employee.

3 8. On October 14, 1982, an explosion occurred at the Site which  
4 resulted in the death of an employee.

5 9. On May 19, 1986, an explosion occurred at the Site which  
6 resulted in the death of two employees and the critical injury of  
7 another.

8 10. The chemicals used at the Site include, but are not limited  
9 to, magnesium and aluminum metal powders, potassium perchlorate,  
10 sodium nitrate, barium nitrate, monoethyleneamine and zinc  
11 carbonate.

12 11. Potassium perchlorate, barium nitrate, and sodium nitrate  
13 are strong oxidizing agents which are highly toxic, strong  
14 tissue irritants and may pose dangerous fire hazards if they  
15 come into direct contact with reducing agents and most organic  
16 substances.

17 12. Magnesium and aluminum powders are strong reducing agents  
18 which are highly flammable and therefore pose dangerous fire  
19 hazards.

20 13. Strong reducing agents and oxidizing agents are highly in-  
21 compatible. When strong oxidizing agents such as potassium  
22 perchlorate or barium nitrate come into contact with strong  
23 reducing agents, such as aluminum and magnesium metal powders, in  
24 quantities which currently exist at the Site, there is a possibi-  
25 lity that an explosion of catastrophic magnitude will occur.

26 14. On October 28, and 29, 1986, EPA and duly authorized  
27 representatives of EPA conducted an inspection at the Site ("the  
28 inspection"). The inspection was performed pursuant to an

1 administrative search warrant issued by the United States District  
2 Court for the District of Arizona. This warrant was based, in  
3 part, on information supplied by an informant that containerized  
4 hazardous substances were illegally buried in trenches in a flood  
5 drainage channel at the Site.

6 15. During the inspection, EPA identified four areas of concern  
7 which may present an imminent and substantial endangerment to  
8 public health and welfare and the environment. These four areas  
9 as described below are referred to respectively as Zones 1-4.

10 16. Zone 1 is an area in the southwest quadrant of the Site.  
11 This zone lies directly to the west of a north-south inner  
12 facility fence and is in between a product fuels storage area  
13 near building "116" and an area which was identified by site  
14 personnel as a burn area for contaminated debris and waste.

15 17. There are approximately 100-150 drums and containers in  
16 Zone 1. These drums and containers were identified by the Site  
17 personnel as containing highly oxidizing wastes, reducing agents  
18 or fuels, explosive materials, and other hazardous substances.  
19 Incompatible materials are being stored directly adjacent to each  
20 other. Many of these drums and containers bear no identifying  
21 marks describing the chemical/physical nature of the contents or  
22 the hazards associated with these substances. A significant  
23 number of the containers are either not covered or loosely covered.  
24 Many of the drums and containers lie within a natural watershed  
25 and therefore are subject to chemical instability or mixing due  
26 to rainfall runoff.

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1 18. Zone 2 is an area described by Site personnel as being a  
2 burn area used to burn contaminated debris and wastes. This zone  
3 is located in the northwest quadrant of the Site directly west of  
4 a north-south inner facility fence, approximately 100 feet  
5 west of building "210", and adjacent to Zone 1.

6 19. There are approximately 100 drums that appear empty, located  
7 along the west edge of the burn area in Zone 2. A pile of debris  
8 lies approximately 100 feet to the south of the burn area.

9 20. On October 29, 1986, during the inspection, at approximately  
10 1430-1530 hours, EPA personnel witnessed what appeared to be an  
11 uncontrolled explosion at or near the debris pile in Zone 2.

12 21. Zone 3 is an area located approximately equidistant between  
13 buildings "304" and "114" on the western portion of the Site. A  
14 non-destructive geophysical survey was conducted by EPA during  
15 the October 28-29 inspection. The preliminary results of this  
16 survey indicate the likely presence of one or more covered trenches  
17 which contain buried metallic material. This suspected trench  
18 area lies within a naturally occurring wash basin which is  
19 susceptible to inundation during periods of heavy rainfall. If a  
20 combination of buried oxidizers and reducers, such as perchlorates  
21 and metal powders come into contact with each other through the  
22 influence of perchlorated rainwater, an uncontrolled generation  
23 of heat could cause explosive conditions resulting in significant  
24 human health and environmental impact.

25 22. Zone 4 is located between buildings "203" and "204". Site  
26 personnel reported that these buildings house explosive product  
27 material.

28 23. There is a drum storage area containing approximately

1 50 full 55-gallon drums of epoxy resins and flammable liquids  
2 as well as 20-30 empty 55-gallon drums in Zone 4.

3 24. The population at risk is approximately 40 employees at  
4 the site and other persons on the Site.

5 III

6 CONCLUSIONS OF LAW

7 25. Respondent is a "person" as defined in Section 101(21) of  
8 CERCLA, 42 U.S.C. § 9601(21).

9 26. The Site and surrounding area is a "facility" as defined in  
10 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

11 27. Respondent is also a person, who by contract, agreement or  
12 otherwise arranged for disposal of hazardous substances, and  
13 is therefore a responsible party as defined in Section 107(a)(3)  
14 of CERCLA, 42 U.S.C. § 9607(a)(3).

15 28. Monoethyleneamine, zinc carbonate, magnesium, potassium  
16 perchlorate, sodium nitrate, and barium nitrate are "hazardous  
17 substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §  
18 9601(14) and therefore are subject to the terms and provisions of  
19 CERCLA.

20 29. The explosions, and the abandonment or discarding of barrels,  
21 containers, or other closed receptacles of hazardous substances,  
22 pollutants or contaminants at the Site are releases of a hazardous  
23 substances pursuant to Section 101(22) of CERCLA, [to be codified  
24 at 42 U.S.C. § 9601(22)].

25 30. Respondent is jointly and severally liable for the actions  
26 required by this Order pursuant to Section 107 of CERCLA, (to be  
27 codified at 42 U.S.C. § 9607).

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IV

DETERMINATIONS

31. Based upon the foregoing Findings of Fact and Conclusions of Law, the Director, Toxics and Waste Management Division, EPA Region 9 has made the following determinations:

A. The release of hazardous substances at a facility owned and operated by the Respondent may present an imminent and substantial endangerment to public health and welfare and the environment.

B. In order to prevent or mitigate immediate and significant risk of harm to public health and welfare and the environment, it is necessary that immediate action be taken to contain and terminate the release of hazardous substances at the site.

C. The response measures ordered herein are consistent with the National Contingency Plan, 40 C.F.R. Part 300.

D. Respondents are responsible for conducting the actions ordered herein, which are necessary to protect public health and welfare and the environment.

V

ORDER

32. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, Respondent is hereby ordered and directed to take the following measures:

Site Mitigation Measures

A. Respondent shall deny access by any unauthorized persons to Zones 1 and 2 as defined in the Findings of Fact.

B. Within five (5) days of receipt of this order, Respondent shall submit to EPA a Site Characterization Work Plan ("SCWP") to identify and characterize hazardous substances on the site.



1 The SCWP shall include provisions for identifying the contents of  
2 all drums and containers on the site and for identifying all  
3 materials buried at the Site. The SCWP shall include a schedule  
4 for implementation of these tasks.

5 C. Within five (5) days of receipt of this order, Respondent  
6 shall submit to EPA for its approval a Removal Work Plan ("RWP")  
7 which sets forth a proposal for removing and disposing of all  
8 hazardous substances at the Site. The provisions of this RWP  
9 shall be consistent with the National Contingency Plan, 40 C.F.R.  
10 Part 300. The RWP shall also include a schedule for its implemen-  
11 tation and completion.

12 D. Respondent shall immediately implement the SCWP and the RWP  
13 upon receipt of EPA approval of such plans. Respondent shall  
14 complete the SCWP and RWP in accordance with the approved schedules.

#### 15 VI

##### 16 NOTICE OF INTENT TO COMPLY

17 33. Immediately upon receipt of this Order, Respondent shall  
18 orally inform EPA of its intent to comply with the terms of this  
19 Order. This shall be confirmed in writing within two (2) days of  
20 receipt of this Order.

#### 21 VII

##### 22 PENALTIES FOR NONCOMPLIANCE

23 34. A willful violation or failure or refusal to comply with  
24 this Order, or any portion thereof, without sufficient cause,  
25 may subject you under Section 106(b)(1) of CERCLA [to be codified  
26 at 42 U.S.C. § 9606(b)(1)] to a civil penalty of not more than  
27 \$25,000 for each day in which such violation occurs or such  
28 failure to comply continues. Failure to comply with this Order,

1 or any portion thereof, may subject Respondent under Section  
2 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), to liability for  
3 punitive damages in an amount up to three times the amount of any  
4 costs incurred by the Government as a result of failure to take  
5 proper action.

6 35. EPA may take over the removal action at any time if EPA  
7 determines that Respondent is not taking appropriate action to  
8 mitigate the site hazard. In the event EPA assumes responsibility  
9 for the removal action, Respondents will be liable for all costs  
10 incurred by EPA to mitigate the site hazard. EPA may order  
11 additional site characterization and/or mitigation actions deemed  
12 necessary by EPA to protect the public health and welfare and the  
13 environment.

#### 14 VIII

#### 15 REIMBURSEMENT

16 36. In the event you comply with the terms of this Order, you may  
17 within 60 days after completion of the required action, petition  
18 for reimbursement from the Fund for the reasonable costs of such  
19 action, plus interest. Section 106(b)(2)(A) of CERCLA [to be  
20 codified at 42 U.S.C. § 9606(b)(2)(A)]. However, to obtain such  
21 reimbursement for reasonable costs you must either: (1) establish  
22 by a preponderance of the evidence that you are not liable for  
23 response costs under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),  
24 and that costs for which you seek reimbursement are reasonable in  
25 light of the action required by this Order; or (2) demonstrate,  
26 based on the administrative record, that EPA's decision in selecting  
27 the response action required by this Order is arbitrary and  
28 capricious or otherwise not in accordance with the law. Section

1 106(b)(2)(C) and (D) of CERCLA [to be codified at 42 U.S.C.  
2 § 9606(b)(2)(C),(D)].

3 IX

4 OPPORTUNITY TO CONFER

5 37. You may request a conference with EPA Region 9 to discuss  
6 the provisions of this Order. At any conference held pursuant to  
7 your request, you may appear in person or by counsel or other  
8 representatives for the purpose of presenting any objections,  
9 defenses or contentions which you may have regarding this Order.  
10 If you desire such a conference, you must make such a request  
11 orally within 24 hours of receipt of this Order, to be immediately  
12 confirmed in a written request.

13 X

14 MISCELLANEOUS PROVISIONS

15 Compliance with Applicable Laws

16 38. In carrying out the terms of this Order, Respondent shall  
17 comply with all federal, state and local laws and regulations.

18 Access

19 39. Employees and authorized representatives of EPA shall be  
20 granted access to the facility for the purpose of verifying  
21 compliance with the provisions of this Order.

22 On-Scene Coordinator

23 40. The EPA On-Scene Coordinator (OSC) shall have authority  
24 vested in the OSC by 40 C.F.R. Part 300, et seq. The OSC shall  
25 have the authority to designate a representative who shall have  
26 access to the site at all times for the purpose of determining  
27 the adequacy of the Respondents' activities. Currently, the  
28 designated OSC is Matthew Monsees.

1 Government Not Liable

2 41. The United States Government shall not be liable for any  
3 injuries or damages to persons or property resulting from the  
4 acts or omissions of the Respondent, its employees, agents or  
5 contractors in carrying out activities pursuant to this Order,  
6 nor shall the Federal Government be held as a party to any  
7 contract entered into by Respondent, or their agents in carrying  
8 out activities pursuant to this Order.

9 Parties Bound

10 42. This Order shall apply to and be binding upon Respondent,  
11 its officers, directors, agents, employees, contractors, successors  
12 and assigns.

13 Endangerment during Implementation

14 43. In the event that the Regional Administrator of EPA, Region  
15 9 determines that any activities (whether pursued in implementation  
16 of or in noncompliance with this Order) or other circumstances  
17 may be endangering the health and welfare of the people on the  
18 site or in the surrounding area or to the environment, the Director  
19 Toxics and Waste Management Division of EPA, Region 9, may order  
20 Respondent to halt the implementation of this Order for such  
21 period of time as is needed to abate the endangerment.

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1 XI

2 EFFECTIVE DATE

3 44. Notwithstanding any conferences requested pursuant to the  
4 provisions of this Order, this Order is effective upon receipt,  
5 and all times for performance shall be calculated from that  
6 date.

7 It is so ordered on this 5 day of November, 1986.

8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9  
10 By: Keith A. Takate

11 JEFF ZELIKSON  
12 ~~for~~ ACTING DIRECTOR,  
13 TOXICS & WASTE MANAGEMENT DIVISION  
14 EPA, REGION IX

15 Contact Persons:

16 John Kemmerer  
17 Environmental Engineer  
18 Superfund Programs Branch (T-4-4)  
19 Environmental Protection Agency  
20 215 Fremont Street  
21 San Francisco, CA 94105  
22 (415) 974-7112

23 \* Jo Ann Asami  
24 Assistant Regional Counsel  
25 Environmental Protection Agency  
26 215 Fremont Street  
27 San Francisco, CA 94105  
28 (415) 974-8237

\* Questions of a legal nature should be directed at Ms. Asami.